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SUPREME COURT

**State of North Dakota**  
JOINT PROCEDURE COMMITTEE

**20130314**

CHAIR  
JUSTICE MARY MUEHLEN MARING  
STAFF ATTORNEY  
MICHAEL J. HAGBURG

October 8, 2013

FIRST FLOOR JUDICIAL WING  
600 E BOULEVARD AVE DEPT 180  
BISMARCK, ND 58505-0530

**FILED**  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

**OCT 08 2013**

Honorable Gerald W. VandeWalle, Chief Justice  
North Dakota Supreme Court  
600 East Boulevard Avenue  
Bismarck, ND 58505-0530

**STATE OF NORTH DAKOTA**

Re: Proposed Amendments to N.D.R.Ct. 3.1 and N.D.R.Ct. 8.4

Dear Chief Justice:

The Joint Procedure Committee met on September 26, 2013, and considered proposed amendments to N.D.R.Ct. 3.1 and N.D.R.Ct. 8.4. The committee recommends that the amendments be approved by the Supreme Court.

N.D.R.Ct. 3.1 – Pleadings

The committee proposes that Rule 3.1(e) be amended to clarify that only a single copy of any pleading or document may be filed with the court. This subdivision was previously amended to specify that only one copy of the demand for change of judge need be filed, superseding the statutory requirement of filing this document in triplicate. Subsequently, members of the committee located other statutory provisions requiring filing of various documents in duplicate. The committee, therefore, recommends that Rule 3.1(e) be amended to apply the single copy requirement to all documents.

The committee proposes that Rule 3.1(h) be amended to require timely filing with proof of service of all documents that are required to be served. Discovery documents would be excluded from this requirement and the requirement would not apply until after the complaint is filed in a case.

Rule 3.1(h) currently requires that proof of service accompany all documents that are filed, unless a statute or rule allows filing before service. This requirement has created problems for court clerks and administrators because some documents by longstanding custom, not statute or rule, have been filed prior to service or without service.

Under the proposed amendment to Rule 3.1(h), the duty to determine whether a document is required to be served and later filed with proof of service would fall on the party or attorney. The requirement that proof of service accompany all filed documents would be eliminated. Under N.D.R.Civ.P. 5(d), proof of service would continue to be required when filing an initiating pleading.

At least two unit administrators have created lists of documents that can be filed without proof of service so that clerks and filers can look up whether a given document can be filed before service. If the Court approves the proposed amendment to Rule 3.1(h), such lists may no longer be needed. The committee suggests that, if these lists remain necessary, the Court direct the Administrative Council to examine the existing lists and create a list that is applicable across the state.

A copy of the proposed amendments to Rule 3.1 is attached.

**N.D.R.Ct. 8.4 – Summons in Action for Divorce, Separation or to Determine Parental Rights and Responsibilities**

The committee proposes that Rule 8.4 be amended to eliminate the requirement that restraining provisions be included in a summons that is published as part of the service by publication procedure in N.D.R.Civ.P. 4(e). This change is necessary because the cost of having a “long-form” summons published has climbed significantly and is almost equal to the fees an attorney would charge for a simple divorce.

Under the proposal, a party would be required to file a summons that includes the restraining provisions with the complaint and affidavit for service by publication in the manner set out in N.D.R.Civ.P. 4(e)(2) and mail this “long-form” summons as required by N.D.R.Civ.P. 4(e)(4).

A copy of the proposed amendments to Rule 8.4 is attached.

The committee appreciates the Court’s consideration of these proposals. Thank you for your attention to this matter.

Sincerely,



Mary Muehlen Maring  
Chair, Joint Procedure Committee

**RULE 3.1. PLEADINGS**

**(a) Legibility and Numbering.** All pleadings and other documents must be typewritten, printed, or reproduced and easily readable. Each sheet must be separately numbered. Pleadings and other documents filed with the court, except as otherwise permitted by the court, must be prepared on 8 1/2 x 11 inch white paper.

**(b) Signature.** All pleadings and other documents of a party represented by an attorney must be signed by at least one attorney of record in the attorney's individual name and contain the attorney's address, telephone number, e-mail address for electronic service, and State Board of Law Examiners identification number. All pleadings and other documents of a party who is not represented by an attorney must be signed by the party and contain the party's address and telephone number.

**(c) Spacing and Names.** Writing must appear on one side of the sheet only and must be double-spaced, except for quoted material. Names must be typed or printed beneath all signatures.

**(d) Binding.** All pleadings or other documents in an action or proceeding must be filed by the clerk flat and unfolded and each set of papers firmly fastened together.

**(e) Filing of Documents.** A party seeking to file a pleading or other document must submit it to the clerk. The first submitted version of a pleading or document will be treated as the original unless otherwise ordered by the court. A party need only file ~~the original~~

22 ~~demand for change of judge~~ a single copy of any pleading or document.

23 (f) Lost Papers. If any original document is lost or withheld by any person, the court  
24 may authorize a copy to be filed.

25 (g) File Numbers. The clerk, at the time of the filing of a case and at the time of the  
26 filing of any responsive pleading, must assign a file number to the case and immediately  
27 notify the attorney of record of the assigned file number. Thereafter, all documents and  
28 pleadings to be filed must bear the assigned file number on the front or title page in the upper  
29 right hand portion of the document to be filed.

30 ~~(h) Proof of Service Required. Proof of service must accompany pleadings and~~  
31 ~~documents submitted to the clerk for filing, unless a rule or statute requires a document to~~  
32 ~~be filed before it is served. Filing After Service. After the complaint is filed, all documents~~  
33 ~~required to be served on a party, together with certificate of service, must be filed with the~~  
34 ~~court within a reasonable time after service. Discovery documents may only be filed as~~  
35 ~~allowed by N.D.R.Civ.P. 5(d)(3).~~

36 (i) Privacy Protection. Parties must follow privacy protection instructions in N.D.R.Ct.  
37 3.4 when making filings with the court. Court personnel have no duty to review documents  
38 for compliance with N.D.R.Ct. 3.4.

39 (j) Non-Conforming Documents.

40 (1) Documents and pleadings that do not conform to this rule may not be filed.

41 (2) If a non-conforming document is filed by mistake, the court on motion or on its  
42 own may order the pleading or other document reformed. If the order is not obeyed, the court

43 may order the document stricken and its service to be of no effect.

44 EXPLANATORY NOTE

45 Rule 3.1 was amended, effective January 1, 1988; March 1, 1996; March 1, 1999;  
46 August 1, 2001; March 1, 2005; March 1, 2007; March 1, 2009; May 1, 2012; March 1,  
47 2013; April 15, 2013;\_\_\_\_\_.

48 Rule 3.1 was reorganized, effective May 1, 2012, to make it clear that all documents  
49 presented for filing must conform to all applicable requirements of the rule.

50 A new subdivision (b) was added, effective March 1, 1996, which contains signature  
51 requirements. The letter designation of each existing subdivision was amended accordingly.

52 Subdivision (b) was amended, effective April 15, 2013, to require the e-mail address  
53 for electronic service under Rule 3.5 to be provided in filed documents.

54 A new subdivision (e) was added, effective March 1, 2005, to clarify that documents  
55 must be filed with the clerk. Submitting a document to a judge or to court personnel other  
56 than the clerk does not constitute filing. The first version of a given document submitted to  
57 the clerk, regardless of what form it is in, will be filed and treated as the original. A party  
58 seeking to correct the original or have another document treated as the original must obtain  
59 an order from the court.

60 Subdivision (e) was amended, effective ~~May 1, 2012, to specify that a party making~~  
61 ~~a demand for change of judge may file only one original~~\_\_\_\_\_, to clarify that only  
62 a single copy of any pleading or document need be filed with the court. This provision  
63 supersedes the requirement in N.D.C.C. § 29-15-21 that a demand for change of judge be

64 filed in triplicate and the requirements in N.D.C.C. §§ 14-12.2-36 and 14-14.1-25 for the  
65 filing of two copies of an order. This provision should be interpreted as superseding any  
66 statutory requirement that multiple copies of a document be filed with the court.

67 Subdivision (h) was amended, effective March 1, 2013, to clarify that, unless a rule  
68 or statute requires a document to be filed before it is served, proof of service must  
69 accompany any document submitted for filing.

70 Subdivision (h) was amended, effective \_\_\_\_\_, to require, once the  
71 complaint has been filed, filing of all documents that must be served, along with a certificate  
72 of service, within a reasonable time after service. This provision is modeled after Minn. R.  
73 Civ. P. 5.04.

74 Subdivision (i) was amended, effective March 1, 2007, to specify that court personnel  
75 have no duty to review documents for compliance with privacy protection rules.

76 Subdivision (i) was amended, effective March 1, 2009, to reflect the transfer of  
77 document privacy protection requirements to N.D.R.Ct. 3.4.

78 Sources: Joint Procedure Committee Minutes of \_\_\_\_\_; April 25-  
79 26, 2013, pages 13-15; September 27, 2012, page 14; January 26-27, pages 16-17; January  
80 24, 2008, pages 9-12; October 11-12, 2007, pages 28-30; April 26-27, 2007, page 31;  
81 September 22-23, 2005, pages 16-17; September 23-24, 2004, pages 3-5; April 29-30, 2004,  
82 pages 6-13, 17-25; January 29-30, 2004, pages 3-8; September 16-17, 2003, pages 2-11;  
83 April 24-25, 2003, pages 6-12; January 29-30, 1998, page 22; September 29-30, 1994, pages  
84 6-7.

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Statutes Affected:

Superseded: N.D.C.C. §§ 14-12.2-36 (in part), 14-14.1-25 (in part), and 29-15-21 (in part).

Cross Reference: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Papers); N.D.R.Civ.P. 11 (Signing of Pleadings, Motions and Other Papers; Representations to Court; Sanctions); N.D.R.Ct. 3.4 (Privacy Protection for Filings Made with the Court); N.D.R.Ct. 3.5 (Electronic Filing in the District Courts); N.D.Sup.Ct.Admin.R. 41 (Access to Judicial Records).

RULE 8.4. SUMMONS IN ACTION FOR DIVORCE, SEPARATION OR TO  
DETERMINE PARENTAL RIGHTS AND RESPONSIBILITIES

(a) Restraining provisions - Divorce or Separation. A summons in a divorce or separation action must be issued by the clerk under the seal of the court, or by an attorney for a party to the action, and include the following restraining provisions:

(1) Neither spouse may dispose of, sell, encumber, or otherwise dissipate any of the parties' assets, except:

(A) For necessities of life or for the necessary generation of income or preservation of assets; or

(B) For retaining counsel to carry on or to contest the proceeding. If a spouse disposes of, sells, encumbers, or otherwise dissipates assets during the interim period, that spouse shall provide to the other spouse an accounting within 30 days.

(2) Neither spouse may harass the other spouse.

(3) All currently available insurance coverage must be maintained and continued without change in coverage or beneficiary designation.

(4) Except for temporary periods, neither spouse may remove any of their minor children from North Dakota without the written consent of the other spouse or order of the court.

(5) Each summons must include the following statement in bold print: If either spouse violates any of these provisions, that spouse may be in contempt of court.

22 (b) Restraining Provisions - Action to Determine Parental Rights and Responsibilities.

23 A summons in an action to determine parental rights and responsibilities must be issued by  
24 the clerk under seal of the court, or by an attorney for a party to the action, and include the  
25 following restraining provisions:

26 (1) Except for temporary periods, neither party may remove any of their minor  
27 children from North Dakota without the written consent of the other party or order of the  
28 court.

29 (2) Each summons must include the following statement in bold print: If a party  
30 violates any of these provisions, that party may be in contempt of court.

31 (c) Applicability of restraining provisions. The restraining provisions contained in the  
32 summons apply to both parties upon service of the summons. The provisions are effective  
33 until otherwise provided by court order or by written stipulation of the parties filed with the  
34 court.

35 (d) Service by Publication. If a summons is served by publication under N.D.R.Civ.P.  
36 4(e), the Rule 8.4 restraining provisions may be omitted from the published summons. A  
37 complete summons, including the Rule 8.4 restraining provisions, must be filed with the  
38 complaint and affidavit for service by publication in the manner set out in N.D.R.Civ.P.  
39 4(e)(2) and mailed under N.D.R.Civ.P. 4(e)(4).

40 EXPLANATORY NOTE

41 Rule 8.4 was amended, effective March 1, 2007; August 1, 2009: \_\_\_\_\_.

42 Rule 8.4 was adopted, effective March 1, 1996.

43           Subdivision (c) was added, effective March 1, 2007, to require restraining provisions  
44 to be included in a summons in an action to determine parental rights and responsibilities  
45 matter.

46           Subdivision (d) was added, effective \_\_\_\_\_, to allow omission of this  
47 rule's restraining provisions from the published version of a summons served under  
48 N.D.R.Civ.P. 4(e).

49           Sources: Joint Procedure Committee Minutes of \_\_\_\_\_; May  
50 21-22, 2009, pages 44-45; April 27-28, 2006, pages 9-10; January 26, 2006, page 13; April  
51 27-28, 1995, pages 17-21.

52           Cross Reference: N.D.R.Ct. Appendix A (Summons in Action for Divorce or  
53 Separation); N.D.R.Civ.P. 4 (Commencement of Action – Service of Process, Pleadings,  
54 Motions and Orders).